



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/170288

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 18, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was held on December 16, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly implemented a tax intercept to recover unpaid overpayments of child assistance benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Jeannie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. The petitioner received child care assistance in 2013 and 2014. On June 25, 2015 the agency sent the petitioner two child care overpayment notices. The first notice stated that the petitioner was

overpaid \$7,198.46 in child care benefits under claim number [REDACTED] for the period from March 3, 2013 through December 31, 2013. The second notice stated that the petitioner was overpaid \$6,318.66 in child care benefits under claim number [REDACTED] for the period from January 1, 2014 through June 30, 2014. These overpayments were caused by the petitioner failing to report accurate household information.

3. On July 2, 2015 the agency sent the petitioner a repayment agreement for these overpayments.
4. On August 4, 2015, September 2, 2015, and October 5, 2015 the agency sent the petitioner dunning notices reminding her of the overpayments.
5. The petitioner did not respond to the repayment agreement nor the three dunning notices. On November 13, 2015, the PACU sent the petitioner a notice informing him that it intended to intercept his income tax refund to recover the unpaid overpayment.
6. On November 23, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### DISCUSSION

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. Wis. Stat., §§49.195(3), 49.155. Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, food stamps, W-2 benefits including child care, and Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to *exclude issues* that were presented at a prior hearing or *that could have been presented at a prior opportunity for hearing*.

Italics added. The petitioner sought to challenge the underlying overpayment. The petitioner argued that he never received the overpayment notices. I do not find this testimony credible. The overpayment notices were mailed to the same address that the petitioner provided on his Request for Fair Hearing. Although the petitioner's address has changed, the post office listed a forwarding address from the address where the notices were sent. The hearing notice was also sent to that address, and although the notice was forwarded, the petitioner appeared for the hearing.

I further note that the petitioner was aware of this overpayment. The overpayment is the result of the petitioner living with his girlfriend and not reporting that information to the agency. This couple had contact with the agency investigator. Notices were also sent to the petitioner's girlfriend. To now argue that he did not know about the overpayment, and did not have an opportunity to contest the overpayment is not an accurate reflection of the facts in this case.

I find that the petitioner received the overpayment notices in June of 2015. The petitioner perhaps discounted the possibility of further collection efforts including the implementation of a tax intercept. However, despite receiving the overpayment notices, the petitioner never filed an appeal challenging the child care overpayment. An appeal of a negative action concerning child care benefits must be filed

within 45 days of the action, and the notices inform the recipients of that deadline. Wis. Adm. Code, §HA 3.05(3). Because the petitioner did not appeal the original overpayment notices sent in June of 2015, she cannot contest the merits of the overpayment now. My review of the exhibits and record demonstrates that the agency has correctly implemented a tax intercept to recover an unpaid child care overpayment.

### **CONCLUSIONS OF LAW**

The agency correctly implemented a tax intercept to recover unpaid overpayments of child assistance benefits.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 7th day of January, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 7, 2016.

Winnebago County Department of Human Services  
Public Assistance Collection Unit